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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: : Chapter 11
: Case No. 18-23538-rdd
SEARS HOLDINGS CORPORATION, *et al.*, :
: Debtors. : (Jointly Administered)
:
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DECLARATION OF TERRY SMOUTER, HANKOOK TIRE AMERICA CORP.

I, Terry Smouter, declare the following to be true and correct under penalty of perjury.

1. I am over the age of 18, and I have personal knowledge of the statements in this Declaration.

2. I am employed by Hankook Tire America Corp. ("Hankook") as Director, Sales Management Team, PC / LT, America HQ, and I have held that position since August 27, 2018.

3. Hankook is a tire manufacturer.

4. Among my responsibilities as Director, Sales Management Team, I am responsible for sales and Seller's Support for the Sears, Roebuck & Co. ("Sears") account, with several other employees who report to me.

5. Attached as Exhibit 1 is a true and correct copy of the Supply Agreement between Hankook and Sears, Roebuck & Co., including the First and Second Amendments (the "Supply Agreement").

6. Hankook and Sears did business under the Supply Agreement from May 1, 2016 until the Supply Agreement expired by its terms effective January 31, 2019.

7. According to Hankook's records, as of October 15, 2018, Sears owed Hankook \$1,043,026.82 in invoices for purchases made and goods delivered under the Supply Agreement for which Sears had not paid. The invoices relate to purchases made during the approximate period of March 2018 to October 15, 2018. This amount is still outstanding.

8. Under the Supply Agreement, Hankook provided Sears with certain rebates and credits, referred to as Seller's Support. See Ex. 1, § 5.

9. It is Hankook's practice to issue credit memos for earned Seller's Support. The credit memos are then applied against open invoices.

10. On January 24, 2019, Eric Roman, a Sears employee, sent me an email stating: "Attached are 4 promotional agreements we'll need your signature on for the 2018 subsidies." A true and correct copy of Mr. Roman's email and subsequent emails is attached as Exhibit 2.

11. Attached to Mr. Roman's January 24, 2019 email, Exhibit 2, were certain Sears Holdings Management Corp. Subsidy Program Agreements, true and correct copies of which are attached as Exhibit 3 ("Subsidy Credits").

12. The Subsidy Credits purported to represent the rebates and credits Sears had earned under the Supply Agreement for purchases made during the period of February 4, 2018 through February 2, 2019. See Ex. 3.

13. On January 31, I approved the credit amounts stated in the Subsidy Credits but informed Mr. Roman with Sears that the credits would be applied to Sears' outstanding invoices: "I have also attached the subsidy credits for 2018 (total of \$665,503.89). These credits will go

toward your open invoices to reduce your open balance. It appears that Sears still owes \$376K after 2018 subsidy credits are applied.” *See Ex. 2.*

14. The Supply Agreement specifically provides for an accounting to be performed at the January 31, 2019 expiration of the Agreement and that any Seller’s Support credits would only be paid by Hankook to the extent any net amount was owed after application of the credits to outstanding amounts owed by Sears under the Supply Agreement. See Ex. 1, § 5H.

15. Included in the Subsidy Credit amounts are credits and rebates relating to the \$1,043,026.82 in invoices that Sears had not paid as of October 15, 2018 and which are still outstanding but for Hankook’s recoupment of the \$665,503.89 in credits and rebates.

16. Hankook first learned that Transform claimed a right to collect the \$665,503.89 in Subsidy Credits in May 2019 when Transform demanded payment of the credits and asserted that Hankook could not apply the credits to Sears’ \$1,043,026.82 outstanding debt because Transform purported to have acquired the right to collect the \$665,503.89 in credits free and clear from amounts owed by Sears directly relating to the credits.

17. On the Subsidy Credits provided to Hankook by Sears, Sears mistakenly identified Hankook’s account as being factored by Hana. *See Ex. 3.*

18. The Subsidy Credits generated by Sears contain Hankook’s correct Nashville address, 333 Commerce Street, Nashville, Tennessee 37201.

19. I have searched, or caused a search of, Hankook’s records and located:

- (a) the attached 2017 Sears Holdings Management Corp. Subsidy Program Agreements, true and correct copies of which are attached as Exhibit 4 (“2017 Subsidy Credits”),
- (b) the attached 2018 Hankook credit memo, a true and correct copy of which is attached as Exhibit 5 (“Sample Credit Memo”), and

(c) the attached sample emails sent to Sears in August of 2016 and September of 2018, true and correct copies of which are attached as Exhibit 6 ("Sample Emails").

20. The 2017 Subsidy Credits generated by Sears contain Hankook's correct Nashville address, 333 Commerce Street, Nashville, Tennessee 37201.

21. The Sample Credit Memo contains Hankook's correct Nashville address, 333 Commerce Street, Nashville, Tennessee 37201.

22. The Sample Emails contain Hankook's correct Nashville address, 333 Commerce Street, Nashville, Tennessee 37201 in the Hankook's sender's signature block.

23. To my knowledge, Hankook did not receive any notices of pleadings filed, orders entered, or notices generated in the Sears bankruptcy case.

FURTHER, DECLARANT SAITH NOT.

Executed on this the 1st day of October 2019.



Terry Smouter

A handwritten signature in black ink, appearing to read "Terry Smouter". It is written in a cursive style with a long, sweeping line for the surname.